

The applicant appreciates the thoroughness of the review by Examiner Eloshway.

A petition and Fee for Extension of Time under 37 CFR 1.136(a) and payment thereof for a two month extension is attached hereto.

1. The Examiner's response to the election of Species I with traverse is noted, namely that the shape of the chute and location of the vent opening are different, along with the Examiner's willingness to examine any claims appertaining to Species I that define features shown in FIG. 3 and that the Examiner believes the requirement to be proper and is made FINAL.

Again, the undersigned must point out what is surely an error on the part of the Examiner. The Examiner identifies the chute of FIG. 3 as different from Species I because of the (conical) shape of the chute and location of the vent opening of FIG. 3.

As the specification on page 8, last sentence clearly points out that FIG. 3 is but a view along the lines 3-3 of FIG. 2. The chute objected to as being a different species (Species II) cannot be a different species because the

conical shape and venting position are **exactly the same** as that of the elected species (I). **There is no difference.** They are one and the same, only a different view of the **same** structures as that of the elected species.

How then, can there possibly be a different Species II when the structures of the alleged second species are the same as those of the elected species (I)? It is only a different view of the same element as shown in FIG 2.

Accordingly, the Examiner is asked to reconsider and to reverse this requirement, now made FINAL because it is in error and this error was explained in the Election as submitted has again been clearly explained as such. FIG 3 is not a different structure, only a different view of the same structure as shown in FIG. 2. It is believed that there can be no basis more convincing to eliminate the need for a restriction requirement than when the purported species is the same part, exactly, only shown from a different view.

Furthermore, as the primary elected species discloses a conical portion of the chute, changing the magnitude of the conical portion must surely be a matter of design expediency. This is a sentiment echoed by the Examiner elsewhere in the Office Action where the Examiner feels that

changing from a straight chute to a conical one is a matter of design expediency. As the Examiner makes such a case (that straight and conical chutes are not patentably distinct elements but rather matters of design choice) then surely changing the magnitude of the conical taper must also be a slight modification made to the same basic structure. Accordingly, the modified chute of FIG. 4 referred to by the Examiner as Species III, is believed to embody the elements of the elected species I, and therefore **not to be a different species**. Reconsideration of this requirement is also respectfully requested.

The Examiner has identified claim 1 as generic, by his own admission. The Examiner asserts that the conical aspect as recited in claim 10 only appertains to a non-elected species. The undersigned has positively shown that a conical portion of the chute is inherent in the elected species. Therefore, the generic base claim is believed to apply to claims 10 and 12 as part of the elected species and the Examiner is respectfully requested to consider claim 10 on its merits and similarly to also consider claim 12.

2. The withdrawal of claims 11 and 15-18 as directed to a non-elected species, is noted. It is believed that generic claim applies to these as well, and pending allowance of the

generic claim, consideration of the withdrawn claims is respectfully requested.

3-4. The recitation of 35 U.S.C. 112 second paragraph and the rejection of claims 1-10 and 12-14 thereunder, is noted.

Claims 10 and 12 have not been canceled because it is believed that the arguments made with the prior election requirement submission and as stated hereinabove are persuasive. Accordingly, the Examiner is respectfully requested to consider these claims. As was stated in the Election of Species, the applicant disagrees with the Examiner's position and has provided what is believed to be irrefutable proof in support thereof.

Claims 1, 5, 6, 7, 8, and 14 have been amended to comply with the Examiner's requests. The applicant appreciates the helpful suggestions provided by the Examiner in this regard.

Reconsideration of the rejections under 35 USC 112 is respectfully requested.

5-8. The recitation of 35 USC 103 (a) and the various claim rejections thereunder is noted.

The principle reference (Holley) discloses a seating assistance device for invalids. Holley is silent as to the problem solved of venting odors in a portable commode.

Any practical combination of Holley with any of the other references cited, would not result in the structures as proposed by the Examiner because Holley is not attempting to solve the problem of venting odors. Rather, any combination of Holley can only produce a toilet seat the elevates or lower the user.

If Holley had an awareness of the problem of venting odors from portable commodes, having a duty to disclose the best mode of bringing forth his invention, he would surely have been required to disclose same. Absent any such disclosure, it is for certain that he was unaware of the problem being solved and certainly, an awareness of the problem being solved is crucial to any consideration of obviousness.

Accordingly, it is believed that the Examiner has relied on Holley, not because of any relevancy to the

problem being solved, but because certain aspects of his device look like the instant invention. It is believed that Holley is non-analogous with regard to the problem of venting a portable commode.

Furthermore, because the purpose of Holley is what would have to transport along with any reference held in view, it is believed that any combination of Holley with any of the cited references would not produce an improvement in the ability of portable commodes to vent foul odors.

In fact, Holley is intended for use with regular fixed toilets and is silent to using his device with a portable commode. Rather Holley clearly **teaches away** from use of his device with a portable commode (see column 2, lines 49-54 wherein he states his device is "adapted to be used with any conventional toilet").

Not only does Holley solve an entirely different problem, but the device of Holley is not even intended for use with portable commodes.

Accordingly, the rejections under 35 USC 103 (a) are believed to be overcome and reconsideration is respectfully requested.

Arguendo, if Holley were to be considered with the other combinations as cited, a discussion follows which relies upon a translation of DE '353, a copy of which is enclosed.

It is acknowledged that a certificate of accurate translation does not accompany this submission. If the Examiner requires one, it will be provided, but is not believed to be necessary because the following discussion relies primarily upon statements by the Examiner and the drawing figures of the prior art reference.

Furthermore, as the previous discussions made regarding Office Action item numbers 5-8 hereinabove are believed to obviate the grounds of rejection, the amendment is thus far believed to already be fully responsive to the Office Action.

The Examiner is merely requested to consider the obvious attributes of DE '353, which are plainly visible in the drawing figures thereof and in the admissions made by the Examiner and which therefore do not require a translation of the text of DE '353. The enclosed translation is provided merely as a courtesy to the Examiner to rely

upon if he wishes to do so or not if he chooses not to do so.

DE '353 does not vent any odors to any distal location as the Examiner suggests. DE '353 relies upon a fan with an active carbon filter to remove odors that is placed in the space between the edge of the seat and the floor. There is neither any teaching or suggestion that his device vent to a distal location as was recited in the original base claim 1.

However, to further differentiate apart from any reading of DE '353, claim 1 element (c) has been amended to recite venting, "means for venting vapors to a distal location that is disposed outside of the room where the portable frame structure is disposed."

Support for this is found in claims 1, 3, and 7 and throughout the objects and detailed description of the specification.

As claim 1 is amended, DE '353 fails to disclose venting to a location outside the room where the portable frame structure is disposed. This is an element, now recited in the base claim, that would also be absent from Holley, DE

'353, and also from any of the proposed prior art combinations.

This is a substantial feature providing benefits absent the prior art. No charcoal filters or replacement thereof are required.

Furthermore, there is no teaching or suggestion in any of the prior art references regarding venting of a portable commode to any location away from the commode itself and certainly no such teaching or suggestion to vent out of the room where the commode is disposed. All references are silent to this problem and therefore also of the claimed structures. As all dependent claims include this limitation as well, all remaining claims are believed to differentiate apart from the prior art. Reconsideration of the rejections thereof under 35 USC 103 (a) is once again respectfully requested.

Furthermore, while it is not a design limiting factor nor an aspect necessary for inclusion into the base claim so as to differentiate the instant invention apart from the prior art, the Examiner asserts that the type of fan, either AC or DC is a design expedient matter. The instant specification provides ample support that one purpose is to

vent a very precise concentration of air, namely the foul smelling air in the bowl to a remote location using a low power fan to save energy (heating, cooling, electrical energy) and also for more quiet operation.

These are deemed as substantial benefits absent the prior art, especially when the use of a fan under 1 watt is compared with DE '353, which specifies a range of from 10 to 25 watts. The instant invention, on this basis alone, provides at least a ten fold savings of electrical energy.

This invention was made in California, and considering the State's current energy crisis, a solution for any given need that relies upon the use of electrical energy that results in lowering electrical energy consumption by at least a factor of ten must be regarded as one that is truly substantial and certainly not obvious.

Regarding the Examiner's comment about claim 9, the Examiner states that changing the shape of the chute from conical to cylindrical is an obvious design expedient, yet he relies upon this as a basis for asserting a distinction among two different species.

It appears to the undersigned that the Examiner is taking opposing views to suit the immediate purpose. The undersigned therefore respectfully asks the Examiner to clearly state his position regarding the shape of the chute, and if the Examiner is indeed open to view both straight and conical chutes as being a matter of design choice, as he says, that he rescind his election decision made FINAL and also consider the claims that appertain to species II and III.

With regard to claims 13 and 14 venting outside the room is an element absent the proposed combination, and accordingly the location of the fan is no longer believed to be relevant to a consideration of patentability. Reconsideration was previously requested.

Agelatos appertains to fixed toilets and is silent to the problem of venting a portable commode. Again, the Examiner is believed to picking and choosing references, and the Agelatos reference is believed to be non-analogous with regard to portable commodes. Reconsideration is respectfully requested.

The same arguments apply to Lee III as Agelatos and reconsideration is respectfully requested.

9. The prior art made of record and not relied upon that is considered pertinent to the applicant's disclosure has been reviewed by the undersigned, but is deemed no more relevant than the applied references.

Disputed claim 10 has been amended to correct an error in antecedent basis arising from the amendments made to the base claim under 35 USC 112. Reconsideration is requested. Other dependent claims were similarly amended (to remove the recitation "means for providing" and to more positively recite a "toilet seat", reconsideration thereof is also respectfully requested.

As all remaining claims 1-10 and 12-14 appear to be in condition of allowance, reconsideration thereof is respectfully requested, as well as a reconsideration of withdrawn claims 11 and 15-18 and disputed claims 10 and 12, and a notice of allowance is courteously urged at the earliest time.

10. The applicant appreciates the opportunity to communicate by telephone with Examiner Elishway, if necessary.

Respectfully submitted,

 11/7/01

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